

***United States Court of Appeals
for the Second Circuit***



**PETITION FOR
REHEARING
EN BANC**

77 5013

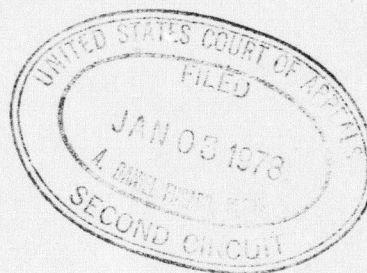
UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

DOCKET NO. 77-5013

THE BOHACK CORPORATION,
Plaintiff-Appellee,

v.

TRUCK DRIVERS LOCAL UNION NO. 807
INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, et al.,
Defendants-Appellants.



DEFENDANTS-APPELLANTS' PETITION FOR A REHEARING IN BANC

O'CONNOR, QUINLAN & MANGAN, P.C
Attorneys for Defendants-Appellants
29-27 41st Avenue
Long Island City, New York 11101
(212) 361-7950

Of Counsel:

J. Warren Mangan, Esq.

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DEFENDANTS-APPELLANTS' PETITION FOR REHEARING IN BANC

Truck Drivers Local Union No. 807, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America respectfully petitions this Court to grant a rehearing in banc of the December 14, 1977 Per Curiam decision of Circuit Court Judges Leonard P. Moore and Murray I. Gurfein and District Court Judge Dudley B. Bonsal, affirming orders of the District Court for the Eastern District of New York on the opinion of Chief Judge Mishler reported in 431 Fed. Supp. 646 (1976). The salient facts of this case have been previously reported by this Court in 541 F 2d 312 (1976). That decision remanded the order of the United States District Court, Eastern District of New York for the determination of the following issues by Bankruptcy Referee C. Albert Parente:

"(1) whether to affirm the contract, or whether the debtor has so conformed to the contract as to make it binding, See In re Public Ledger, Inc., 161 F 2d 762, 767 (3rd Cir. 1947), cited with approval in REA Express, Inc., supra. 523 F 2d at 170; (2) whether to grant the debtor's petition to reject the agreement as onerous, adhering to our admonition in Keven Steel to 'move cautiously in allowing rejection of a collective bargaining agreement,' 519 F 2d at 707; and (3) whether to order arbitration under its terms in any event, and on what issue." [Emphasis added].

The December 14, 1977 Per Curiam decision of this Court affirmed the rejection of that labor agreement, pursuant to Section 313(1) of the Bankruptcy Act, 11 U.S.C. Section '3(1) and permitted the bankruptcy court to determine the appropriate contractual grievance forum to hear the authorized disputes between the Bohack Corporation ("Bohack"), as debtor-in-possession ("DIP"), and Truck Drivers Local Union No. 807, I.B.T. ("Local 807"). Those disputes stem from the DIP's failure to utilize its own truck drivers to make deliveries to the Bohack stores. Local 807 contends that:

1. The bankruptcy court is without jurisdiction to determine that the New York City Joint Local Committee ("Committee") is inappropriate to hear the disputes between Local 807 and DIP, and

2. If any compensatory damages are found to be due the truck drivers employed by DIP, the Local 807 Labor-Management Health and Pension Funds and/or Local 807, by the Committee, they should have the status of administration expenses.

This Court has acknowledged that where a debtor's business is continued by a DIP the burden is upon the DIP to take immediate action to reject any labor agreement between the bargaining representative for the DIP's employees and the debtor. The DIP, by continuing the debtor's operation with

the same employees (without changing the terms and conditions of their employment) is deemed to have assumed the debtor's labor agreement and the DIP cannot later reject it. In re Public Ledger Inc. 161 F 2d 762 (3d Cir. 1947), cited with approval in Brotherhood of Railway, Airline and Steamship Clerks, etc. v. REA Express, Inc. 523 F 2d 164 (2d Cir. 1975).

Bohack filed its petition under Chapter XI of the Bankruptcy Act, 11 U.S.C. 701 et seq., on July 30, 1974. On that same day Bankruptcy Judge Parente executed an order authorizing Bohack to continue its business as a DIP, and provided that the DIP had the authority "to enter into any contracts incidental to the normal and usual operation" of Bohack's business. From July 30, 1974 until July 18, 1975 (more than 11½ months) the DIP employed all of the debtor's truck drivers^{1/} and conformed to the terms and conditions of employment set forth in the labor agreement between Local 807 and the debtor. The DIP paid the wage rates, recognized the drivers seniority with the debtor for employment and fringe benefit purposes, deducted Local 807's dues in accordance with the Agreement's check-off

^{1/} This number was originally 120. It was reduced to 60 on December 16, 1974 and to 32 during May 1975.

provisions, contributed health and pension contributions on behalf of drivers to the Local 807 Labor-Management Health and Pension Funds and engaged in grievance proceedings with Local 807 representatives (255a, 346a-347a). In addition, Bohack's total operations carried on without a break following the filing of its Chapter XI petition with the same management and supervisory personnel (356a).

The DIP may not be the same legal entity as the debtor, but it can, by its conduct, so conform "to the contract as to make it binding."^{2/} During each of the proceedings and appeals that the DIP and Local 807 have instituted, since June 30, 1975, no issue has been raised questioning Bohack's application of the terms and conditions of the debtor's labor agreement between the June 30, 1974 - July 19, 1975 period.^{3/}

In fact, on August 1, 1975, Bohack served and filed a counter-claim seeking specific performance of the debtor's labor agreement (72a). By its conduct, since filing the Chapter XI petition, it is evident that the DIP elected to assume the debtor's labor agreement and receive the benefit of the drivers' services

^{2/} Truck Drivers Local Union No. 807 v. The Bohack Corporation, 541 F 2d 312 at 321 (2d Cir. 1976).

^{3/} Local 807's contention is that (1) Bohack has breached the Agreement by the change of its delivery operations to the stores on and after December 16, 1974 and (2) that the New York City Joint Local Committee should hear the authorized disputes and either affirm or deny Local 807's contention.

rather than to face the uncertainty and turmoil that might have followed if it sought to renegotiate its terms and conditions following the filing of the Chapter XI petition. Having elected to make the debtor's contract its own, the DIP is bound to that agreement, just as if it had been made by the DIP in the first instance.^{4/}

The DIP can assume or adopt the labor agreement of the debtor without a specific order from the bankruptcy court. In re Wil-low Cafeterias, Inc. (Kaftan v. Siegel) 111 F 2d 429 (2d Cir. 1940). This Court construed the power of the DIP to include entering into collective bargaining agreements with the bargaining representative for its employees, without a specific order from the bankruptcy court. A fortiori the DIP has authority to assume an existing collective bargaining agreement without an order from the bankruptcy court.

The DIP is not bound to assume a labor agreement entered into by the debtor but it must act promptly if it intends to reject the terms thereof. The practical effect of Section 313(1) of the Bankruptcy Act is to encourage creditors,

^{4/} American Anthracite and Bituminous Coal Corp. v. Leonardo Arrevabene, S.A., etal 280 F 2d 119, 124 (2d Cir. 1960)

including employees and their bargaining representative, to renegotiate their mutual rights, if and when requested by the debtor, in order to keep the operation going. Yet, in the instant case, the DIP admittedly conformed to the terms of the debtor's labor agreement until July 18, 1975, and never sought to renegotiate any of the rights or obligations set forth therein.^{5/}

In Public Ledger the employer filed its petition under Chapter X of the Bankruptcy Act, 11 U.S.C. Section 501 et seq. on November 7, 1941. The bankruptcy court ordered the trustees to continue the operations of the business until January 5, 1942, when the court ordered its discontinuance. All wages earned during the period between November 7, 1941 - January 5, 1942 (excluding vacation and severance claims) were paid by the trustees.

The union contracts executed by the bankrupt provided for vacation with pay and a severance benefit. The trustees denied the vacation and severance claims contending that the bankrupt's labor agreements had never been assumed by them,

^{5/} Of course, Local 807 has continuously contended, from December 16, 1974, that Bohack was violating the Agreement by receiving deliveries at its stores off Truck Fleet trailers that were not operated by Bohack drivers. However, the terms of the Agreement were otherwise applied to its drivers from July 30, 1974 through July 18, 1975.

and upon the further ground that the labor agreements could not be legally assumed without the specific authorization of the bankruptcy court. The claims were disallowed by the bankruptcy court and the district court affirmed. The Third Circuit reversed.

The evidence clearly showed that the trustee chose to keep the bankrupt's employees at work under the terms of the bankrupt's labor agreements. Furthermore, the trustees obtained the employees services with full knowledge that those services were being provided under the terms of the bankrupt's labor agreements. In response to the trustees' argument that the bankruptcy court did not "authorize or intend to authorize assumption of the" labor agreements, the Third Circuit said:

"We think the inference unjustified. It is quite evident that the Court expected that a workable plan for reorganization was possible of adoption within a short period of time, and, of course, it knew that labor tranquility was necessary. The court knew, too, that good labor conditions under the contract constituted a valuable asset, and a necessary one to any possible reorganization or sale of the Ledger as a going concern. It is unreasonable to assume that the court contemplated anything but the continuance of the labor contract as the basis for continued services of the employees."

The Third Circuit found little difference between a trustee's expressly assuming a labor agreement or merely knowingly conforming to its terms. Their finding was that:

"The trustees could not seek and accept the benefits of the employment under the favorable terms of the contract without for the time of enjoying them, accepting and yielding to terms deemed burdensome."

In the Kevin Steel, REA Express, Inc. and Bohack cases this Court "reasoned that the status of the debtor-employer is, in some respects, analogous to that of a successor employer so far as an existing collective bargaining agreement is concerned, insofar as the debtor is a 'new judicial entity.'" ^{6/}
The Supreme Court recognized in NLRB v. Burns International Security Services, 406 U.S. 272 (1972) that debtors-in-possession will often find it advantageous to observe the debtor's labor agreement, rather than to face uncertainty and turmoil. The Supreme Court also speculated that the National Labor Relations Board (Board) might properly find in certain circumstances that the successor has assumed the obligations of the debtor's contract 406 U.S. at 291. ^{7/}

^{6/} Local 807 v. The Bohack Corporation, at p. 320

^{7/} One of the circumstances enumerated by the Supreme Court was a reorganization proceeding.

The Board has found that a successor employer, by its conduct consented to be bound by its predecessor's labor agreement and ordered the successor to comply with the existing contract. Eklund's Sweden House Inn, 203 NLRB 413 (1973) and Ethan Allan, Inc. 218 NLRB 208; enf'd in mat. part., 544 F 2d 742 (4th Cir., 1976), in Eklund the employer purchased a motel complete with a restaurant and lounge. The motel operations continued unchanged. The restaurant and bar was closed. The sale contract specifically provided that the union contract which had been ratified four months before was not being assigned or assumed by the purchaser. The seller's manager, who was retained by the purchaser, told the union that there would be no change with respect to the contract. He also said the dues check-off would continue and that dues had already been deducted for next month. The new owner informed the union that it should direct questions about the sale to his manager. Later when the union asked about its failure to receive the check-off they were directed to the new owner's attorney and were informed by him that his client would not honor the contract and that the dues check-off would end. At another meeting with the attorney, management rights and no-strike clauses were proposed.

The Board found that the new owner provided the same motel

service with the same personnel in the same jobs and the Board found that there was no change in the employing industry. This led to the conclusion that the employer was a successor. The Board held that the new employer violated its duty to bargain by announcing new wages and benefits without consultation with the union. The early conduct of the employer was found to indicate his consent to be bound by the contract even though the purchase agreement contained a nonassumption clause.

In Ethan Allen a furniture manufacturer temporarily leased (with conditional agreement to purchase) supplier's plant, following default by supplier on certain bank loans, and operated it for six weeks. Thereafter, there was a short shutdown. The manufacturer then purchased the plant from the bank at a foreclosure sale. It reopened the plant with just over half of the number employed on the shutdown date and with all operations other than traditional supply functions having been terminated.

Because it directed and paid plant employees and supervisors, continued predecessor's operations basically intact, and honored the terms of the labor agreement during the leasing period, the Board concluded that the manufacturer was a successor to its supplier's bargaining obligation and had adopted by conduct the predecessor's labor agreement

for the balance of its term. The Fourth Circuit enforced the Board's order "because there was enough evidence of recognition of the union contract's existence and continuance [during the six week period] to support the Board's finding that there had been an adoption...of the contract."^{8/}

Local 807 seeks arbitration of its disputes with the DIP before a designated grievance panel set forth in the labor agreement. If the DIP is permitted to reject the labor agreement any damages found to have been sustained as a result of the DIP's unilateral action will be treated as general claims of the estate. If the DIP is found to have adopted or assumed the debtor's labor agreement any damages found to have been sustained will be administration claims. The issue before the arbitrator is, under the circumstances that existed for the DIP, whether there was a breach of the labor agreement. If such a breach is found the arbitrator will then determine what damages, if any, have been sustained as a result thereof. Truck Drivers Local Union No. 807 v. The Bohack Corporation, 541 F 2d at 321.^{9/} If the arbitration

^{8/} NLRB v. Pine Valley Div. of Ethan Allen, Inc. 544 F 2d 742 (4th Cir. 1976). Although neither of these Board decisions involve an employer in reorganization they are worthy of considerable attention for the time and conduct factors applied by the Board and the Fourth Circuit in finding that a successor employer is bound by its predecessor's labor agreement.

^{9/} Local 807 v. Bohack, *supra* at 320

forum finds no breach of the labor agreement the dispute is resolved with final and binding effect upon all interested persons or entities. If the arbitrator finds that the labor agreement has been breached and compensatory damages awarded the priority and status of that award "would be a matter of bankruptcy law for the bankruptcy court to decide".^{10/}

When the DIP assumes a labor agreement, meritorious employee claims are entitled to priority as a "cost and expense of administration" under Section 64(a)(1) of the Bankruptcy Act, 11 U.S.C. 104(a)(1). In re Public Ledger, supra at 769-771. Compare McCloskey v. Division of Labor Law Enforcement, 200 F 2d 402 (9th Cir. 1952); In re Men's Clothing Code Authority, 71 F. Supp. 469 (S.D.N.Y. 1937). Although by its terms Section 64 applies to straight bankruptcy, the Bankruptcy Act provides elsewhere that Section 64 governs Chapter XI arrangements. 11 U.S.C. Section 702.

Since the DIP is a separate legal entity, carrying on the business for the benefit of the prefiling creditors, fairness requires that claims incident to the DIP's operation of the business be paid before those of creditors, for whose benefit the continued operation of the business was permitted. See Reading Co. v. Brown, 391 U.S. 471 at 478, 88 S. Ct.

^{10/} Ibid

1759, 20 L. Ed. 2d 751 (1968). The First Circuit has stated
In re Mammoth Mart, Inc., 536 F 2d 950 (1st Cir. 1976):

"When third parties are induced to supply goods or services to the debtor-in-possession pursuant to a contract that has not been rejected, the purposes of Section 64(a)(1) plainly require that the claims be afforded priority."

Chief Judge Mishler in his April 21, 1977 Memorandum of Decision agreed with Local 807 that the labor agreement controls the question of the grievance procedure to be followed to resolve authorized disputes. However, he did not decide the issue of which grievance tribunal, under the labor agreement, had jurisdiction to hear those disputes. Footnote 6 of Judge Mishler's Memorandum of Decision states that Bohack disagrees with Local 807's view that these disputes should be submitted to the Committee then "the bankruptcy court will have to determine the appropriate committee for arbitration." (149a).^{11/} Chief Judge Mishler's procedure for the selection of the grievance forum is misplaced.

The issue is not whether Bohack presently agrees with

^{11/} Bohack has already refused to submit any authorized dispute to the Committee. On September 28, 1976 Stanley Shaw, Esq. so stated to Judge Parente at the hearing to determine if arbitration should be authorized:

The Court: I support your position, Mr. Mangan but I cannot control the other side to agree. Obviously he has some objection to the [Committee].

Mr. Shaw: Yes, I do, Your Honor.

Local 807 on a grievance forum, it is which forum the labor agreement designates as having jurisdiction over these disputes. This Court found that "the bankruptcy judge had not approved the submission of the dispute to the grievance machinery" so it did not reach the issue of jurisdiction between the committees.^{12/}

Bankruptcy Referee Parente's order of October 15, 1976 provides that Local 807 and Bohack should:

"submit the grievances alleging [Bohack's] violation of Article 40, Section 4(a), Article 50, Section 2 and Rider paragraph 2, of the [Agreement] to arbitration ..."^{13/}

The Committee is the only grievance tribunal in the Agreement with original jurisdiction to render a decision on any of the authorized issues set forth in both the October 15 and October

^{12/} 541 F 2d at 319.

^{13/} The October 21, 1975 order did not vacate the October 15, 1976 order. Local 807 contends that both orders reflect the issues that the bankruptcy court authorized be submitted to arbitration pursuant to the remand of this Court.

21, 1976 orders.^{14/}

The Agreement consists of three sections. Articles 1-39 (15a-34a) constitute the National Master Freight Agreement ("National Section"). Articles 40-68 (37a-55a) contain the New Jersey-New York Area General Trucking Supplemental Agreement ("Area Section"). In addition, there is a two page document known as the Local 807 Rider Agreement ("Rider") (63a-64a). The Agreement's grievance procedures are contained in Articles 8 (22a-25a) and 46 (42a-44a). The jurisdiction for each grievance forum referred to in the Agreement is described in either Article 8, 45 or 46.^{15/}

14/ Article 46, Section 2 of the Agreement provides:

"Questions or disputes concerning the interpretation, application or enforcement of the grievance procedure provided in this Agreement shall themselves be deemed arbitrable before the [Committee] subject to appeals procedure set forth in this Article."

15/ The jurisdiction of the National Grievance Committee is set forth in Article 8, Sections 1(a), (b), 2(b), 3 and 4 (22a-24a); the Committee's is found in Article 45, Section 1 and Article 46, Section 2 (42a, 44a); the Joint Area Committee's is located in Article 45, Section 2 and Article 46, Section 1(c) (41a, 43a); the Eastern Conference Joint Area Committee's is stated in Article 45, Section 3 and Article 46, Section 1(f) (41a, 43a-44a) and the New York City Trucking Arbitration Authority is set forth in Article 46, Section 1(a) (43a).

The disposition of grievances, other than discharge cases, is referred to in the terminology of "settlement".^{16/}

If a dispute or grievance is settled by a majority vote of the Committee its decision is final and binding on Local 807, the employer and any employees involved.^{17/} However, where a decision of the Committee interprets a provision contained in the Area Section it is automatically reviewed

^{16/} Article 45, Section 1 of the Agreement (41a) gives the Committee exclusive jurisdiction over all disputes and grievances involving the signatory parties, except for discharge cases. The New York City Trucking Arbitration Authority has exclusive jurisdiction of all discharge cases involving Local 807 and signatory employers to the Agreement (43a).

^{17/} Article 46, Section 1(b)(1) of the Agreement (43a) provides:

"Where a [Committee], by majority vote, settles a dispute, no appeal may be taken to the Joint Area Committee. Such decision shall be final and binding on the Local Union, the Employer and any employee(s) involved."

by the Joint Area Committee.^{18/} The Joint Area Committee may review Committee decisions on its own initiative "to assure clear and uniform understanding of the meaning of all provisions" of the Area Section.^{19/}

If the Committee deadlocks and cannot settle a grievance or dispute by a majority vote the matter is referred to the Joint Area Committee.^{20/} By mutual agreement of the parties to the dispute or grievance, which could not be settled by the

18/ Article 46, Section 2(g) of the Agreement (44a) provides:

"It is further agreed that all matters pertaining to the interpretation of this Agreement, as defined in Article 45 of this Agreement, shall automatically be reviewed by the Joint Area Committee and any decision of the [Committee] may be reviewed by the Joint Area Committee on its own initiative at any time if any member thereof has reason to believe such decision could be or is being construed as [an] interpretation of [the] contract as defined in this Agreement."

19/ Ibid.

20/ Article 45, Section 2 of the Agreement (41a) provides:

"The Joint Area Committee, in accordance with the procedures established in Article 46 of this Agreement, shall have jurisdiction over disputes and grievances involving the Employer and Local Unions which cannot be settled by majority vote of the [Committee]."

Committee, it may be referred directly to the Eastern Conference Joint Area Committee and, thereby, bypass the Joint Area Committee.^{21/} If the Joint Area Committee hears the case and, by a majority vote, settles the dispute, no appeal may be taken to the Eastern Conference Joint Area Committee.^{22/} The decision is final and binding. If the Joint Area Committee deadlocks, at the request of either of the parties involved in the dispute, it will be referred to the Eastern Conference

21/ Article 46, Section 1(c) of the Agreement (43a) provides:

"Where a Joint Local Committee is unable to agree or come to a decision on a case, the dispute shall be promptly submitted to the Joint Area Committee. By mutual agreement the parties may waive the Joint Area Committee step and submit any case deadlocked by the [Committee] to the Eastern Conference Joint Area Committee. Such cases as are referred shall include the minutes of the [Committee's] proceedings on the case. Such minutes shall set forth the positions and facts relied on by each party, but each party may appear and present evidence at the hearing before the Joint Area Committee or the Eastern Conference Joint Area Committee."

22/ Article 46, Section 1(d) of the Agreement (43a) provides:

"Where the Joint Area Committee, by a majority vote, settles a dispute, no appeal may be taken to the Eastern Conference Joint Area Committee. Such decision shall be final and binding on both parties with no further appeal."

Joint Area Committee.^{23/} Where the Eastern Conference Joint Area Committee settles a dispute, by a majority vote, it is final and binding.^{24/} If the case is deadlocked it may, if agreed upon by a majority of that panel, submit the dispute to an umpire for a decision.^{25/} If the Eastern Conference Joint Area Committee does not submit the deadlocked dispute to an umpire the case is to be referred to the National Grievance Committee.^{26/} In the event that the case is deadlocked by the National Grievance Committee the no-strike

23/ Article 46, Section 1(f) of the Agreement (43a-44a) provides:

"Where the Joint Area Committee is unable to agree or come to a decision on a case, it shall at the request of the Union or the Employer involved, be appealed to the Eastern Conference Joint Area Committee..."

24/ Ibid (44a).

25/ Article 46, Section 1(h) of the Agreement (44a) provides:

"Deadlocked cases may be submitted to umpire handling if a majority of the Eastern Conference Joint Area Committee determine to submit such matter to an umpire for decision."

26/ Article 8, Section 1(a) of the Agreement (22a) provides:

"If upon the completion of the grievance procedure of the Supplemental Agreement the matter is deadlocked the case shall be immediately forwarded to both the Employer and Union Secretaries of the National Grievance Committee, together with all pertinent files, evidence, records and committee transcripts."

clause of the Agreement ceases to be effective and either party may resort to "all legal and economic recourse."^{27/}

The only occasion for the National Grievance Committee to make an original record on any matter brought before it is as a condition precedent to a damage action contemplated as a result of a lockout, unauthorized strike, etc. during the term of this Agreement.^{28/} For the National Grievance Committee to review a factual grievance it must go up the appellate ladder. The original record is developed by the Committee. In addition the Committee, Joint Area Committee and Eastern Conference Joint Area Committee must, each, be unable to reach a majority decision. Even so, the only way that this type of case gets to the National Grievance Committee is if a majority of the Eastern Conference Joint Area Committee do not agree to submit the dispute to an umpire for decision.

The Agreement also empowers the National Grievance Committee with both direct and certiorari jurisdiction over the interpretation of provisions contained in the National

27/ Article 8, Section 1(b) of the Agreement (22a) provides:

"If the National Grievance Committee is deadlocked on the disposition of the dispute then either party shall be entitled to all lawful economic recourse to support its position in the matter."

28/ Article 8, Section 2(b) of the Agreement (23a-24a).

Section. ^{29/} A request for a direct interpretation by the National Committee of any provision contained in the National Section is submitted directly to the Joint Area Committee. That panel makes the record of the issues, and positions involved and submits the record to the National Grievance Committee for decision. ^{30/} The National Grievance Committee

29/ Article 8, Section 1(a) and Section 3 of the Agreement (22a-24a). Article 8, Section 1(a) provides:

"Any request for interpretation of the National Master Agreement shall be submitted directly to the Conference Joint Area Committee for the making of a record on the matter, after which it shall be immediately referred to the National Grievance Committee. Such request shall be filed with both the Union and Employer Secretaries of the National Grievance Committee with a complete statement of the matter."

Article 8, Section 3 provides:

"The National Grievance Committee by majority vote may consider and review all questions of interpretation which may arise under the provisions contained in the Master Agreement which are submitted by either the Union Area Director or the designated Employer representative; and shall have the authority to reverse and set aside the majority interpretation of any area, regional, or local grievance committee, if, in its opinion, such interpretation is contrary to the provisions set forth in the Master Agreement, in which case the decision of the National Grievance Committee shall be final and binding."

30/ Supra, note 29.

may also review interpretations of the National Section made by any area, regional or local grievance committee and has the authority to reverse that interpretation.^{31/} The decision of the National Grievance Committee is final and binding.^{32/}

Although the National Grievance Committee has sole jurisdiction to make final interpretations of the National Section, an interpretation of the National Section can be made by the Committee, Joint Area Committee or Eastern Conference Joint Area Committee. However, any interpretation of the National Section by one of these other tribunals is subject to review and reversal by the National Grievance Committee. On a direct request the record is made by the Joint Area Committee. Where the National Grievance Committee reviews interpretations on the National Section the record is made at the level where the grievance or dispute is "settled" and either the Union Area Director or the designated Employer representatives can submit a request for review to the National Grievance Committee. Local 807 can file any grievance or dispute with the Committee,^{33/} except a discharge

^{31/} Ibid.

^{32/} Ibid.

^{33/} Article 46, Section 2 of the Agreement (44a). See also: Article 7 of the Agreement (22a), which provides:

"Authorized representatives of the Union may file grievances alleging violation of the Agreement, under local grievance procedure, or as provided herein."

case. A majority decision of the Committee is final and binding unless otherwise reviewed and reversed by an appellate tribunal on (1) a question of interpretation of the Agreement or (2) application and/or enforcement of the grievance procedure. With respect to the facts and issues in these authorized disputes the Committee is the only grievance tribunal of original jurisdiction capable of rendering a decision. The other forums referred to in the Agreement are limited to specific appellate review.

What authority empowers the bankruptcy court to make a final determination of "the appropriate committee for arbitration"? Any judicial inquiry into the arbitration process is pursuant to Section 301 of the National Labor Relations Act, 29 U.S.C. Section 185, which empowers district courts to hear "suits for violation of [collective bargaining] contracts."^{34/} Just as the bankruptcy court does not possess "jurisdiction over labor disputes" it is not empowered to engage in any procedural interpretation of arbitration agreements.^{35/}

^{34/} United Steelworkers v. Warrior & Gulf Navigation Co., 363 U.S. 574 (1960).

^{35/} Truck Drivers Local 807, I.B.T. v. Bohack Corp., 7 Collier Bankruptcy Cases 485 (E.D.N.Y. 1975).

CONCLUSION

For the foregoing reasons, we respectfully submit that this petition for a rehearing in banc should be granted.

Respectfully submitted,

O'Connor, Quinlan & Mangan, P.C.
Attorney for Defendants-Appellants
Truck Drivers Local Union No. 807
29-27 41st Avenue
Long Island City, New York 11101
(212) 361-7950

Of Counsel:

J. Warren Mangan, Esq.